



1, in 4148
Attorney Docket No. 850-219-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Heinz LOHRER

Serial No.: 10/576,699

Art Unit: 4148

Filed: April 21, 2006

Examiner: O. Hawthorne

For: BANDAGE INSERT/INSET COMPOSITE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

Sir:

This is in response to the Notice of Non-Compliant Amendment mailed July 28, 2008 in the above-identified application. The Notice of Non-Compliant Amendment is in error, and is therefore traversed. A copy of the Response filed April 10, 2008 is also enclosed. A copy of the Notice of Non-Compliant Amendment is enclosed.

The Notice of Non-Compliant Amendment is in error because the Response made no amendments to the Claims. Claim 12 appears on Page 1 of the Response, where it is reproduced solely "for convenience in considering Applicant's arguments ..." When no amendment to the claims is made, there is no requirement to provide a listing of all claims with status identifiers.

Because no amendments to the claims were made, the checked boxes of the Notice of Non-Compliant Amendment, regarding "Amendments to the Claims" are not pertinent or applicable.

Accordingly and forwarding of the Response to the Examiner is now in order. If there are any questions, please call the undersigned Attorney.

August 28, 2008

Respectfully submitted,

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I hereby certify that this paper is being deposited with the U.S. Postal Service as First Class Mail on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dorothy Tomasco August 28, 2008
Dorothy Tomasco Date

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RESPONSE

Sir:

This is in response to the Office Action mailed January 7, 2008. This application has one claim, and for convenience in considering Applicant's arguments herein, the single claim is set forth below:

12. (New) An elastic bandage for holding an orthopedic or orthotic element adjacent an injured or injury-prone foot, comprising:

A) an elastic sleeve or tube sized and shaped to fit over a foot, the elastic sleeve or tube including a sole region positioned adjacent the sole of the foot when the bandage is fitted thereon; and

B) a holder in the form of a hook and loop fastener area provided on the inside of the sleeve or tube and extending over the entire sole region;

whereby an orthopedic or orthotic element provided with a complementary hook and loop fastening area can be detachably fastened to the holder at any desired position on the sole region.

I hereby certify that this paper is being deposited with the U.S. Postal Service as First Class Mail on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dorothy Tomasco April 7, 2008
Dorothy Tomasco Date

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Attention is directed to the following claim specific features of the elastic bandage found in Claim 12:

- An elastic bandage sleeve has a sole region.
- A hook and loop fastener area is provided on the inside of the elastic sleeve, over the entire sole region.
- An orthopedic or orthotic element provided with a complementary hook and loop fastening area can be detachably fastened to the holder at any desired position on the sole region.

The claimed elastic bandage secures an orthopedic or orthotic element directly to the sole area of an elastic bandage sleeve, and not in a pocket forming a part of a bandage. Therefore, the orthopedic or orthotic device may be selectably positioned on the sole region of the elastic bandage sleeve, and it therefore may also be selectably positioned with respect to the foot on which the bandage is used. This would not be possible if the orthopedic or orthotic elements were confined in a pocket on an elastic bandage, because the position of the pocket would predetermine the position of anything placed in the pocket. This is important because an orthopedic or orthotic element should be positioned in the correct location to provide support and/or padding to the portion of the foot selected by the user, and not to a portion of the foot preselected by the manufacturer.

The claim was rejected as being obvious over Brother et al US Patent 6,234,988 in view of Juozaitis US Patent 6,047,403. Brother is characterized as disclosing an elastic bandage for holding an orthopedic or orthotic element adjacent to an injured or injury prone foot, but the Office Action admits that Brother fails to disclose a holder in the form of a hook and loop fastener area provided on the inside of the sleeve or tube and extending over the entire sole region whereby an orthopedic or orthotic element provided with a complementary hook and loop fastener area can be detachably fastened to the holder at any desired position on the sole region. Applicant would further note that the Brother patent is directed toward providing a closed pocket for holding a compressible, polymeric material which is flowable at room temperature, i.e., a pad which must be tightly confined to be functional.

Juozaitis is cited for teaching a pocket secured to or generally along a cylindrical sleeve and having a hook and loop type fastener to open and close the pocket. The conclusion put forth in the Office Action is that one of ordinary skill in the art would modify the elastic sleeve of Brother to have a holder in the form of a hook and loop fastener for positioning an orthopedic device in a trouble free manner on a relevant limb. The Applicant strongly disagrees.

Juozaitis does not provide any structural feature or teaching that could be combined with Brother to satisfy the elements of claim 12 herein. Juozaitis provides a pocket in a fixed, predetermined position upon a loose fitting sleeve serving the function of a cast cover. The loose fitting sleeve has no supportive function such that one skilled in the art would even consider or combining it with Brother.

The Juozaitis pocket has a flap with a hook and loop style closure. Thus, the flap and hook and loop fastening material of Juozaitis merely serves to close the pocket located on the sleeve and confine the contents of the pocket, but does not function to secure anything to the sleeve itself.

If one were to attempt to combine Brother and Juozaitis, the most that would result is a pocket with a hook and loop closure flap on the exterior of an elastic bandage. Such a pocket appears unsuitable for containing the flowable materials described in the Brother reference, and would introduce a flap that would irritate the foot and detract from Brothers desired purpose of padding the foot.


Even if Brother and Juozaitis were combined to provide a pocket on an elastic bandage, Applicant's claimed device is clearly distinguishable and unobvious because according to Applicant's claim 12, an orthopedic or orthotic element is not contained in a pocket but is adhered directly to a hook and loop area on the sole of an elastic bandage sleeve. Because the orthopedic or orthotic element is not contained in a pocket, the size and position of the orthopedic or orthotic element is no way limited to the predetermined size and position of a pocket on an elastic bandage. Instead, in Applicant's claimed bandage, a variety of orthopedic or orthotic elements can be used with the elastic bandage, and the position of the orthopedic or orthotic element with respect to the sole of the foot can be varied to achieve the best fit and

Further, Applicant's hook and loop area is on the inside of the bandage, also not shown or suggested in either Brother or Juozaitis, so that an orthopedic or orthotic element is held in the desired position against the sole of the foot by the elastic sleeve of the bandage.

Therefore, because both the Brother and Juozaitis references are directed toward pockets in predetermined positions, they cannot teach or make obvious Applicant's device with a hook and loop fastening area provided on the inside of an elastic sleeve or tube, for holding an orthopedic or orthotic element directly on an elastic bandage sleeve in a desired selectable position. Reconsideration and withdrawal of the rejection is believed proper and earnestly requested.

April 7, 2008

Respectfully submitted,


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